



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA-HQ-OW-2013-0280; FRL-9976-92-OW]

State of North Dakota Underground Injection Control Program; Class VI Primacy

Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is hereby approving an application from the state of North Dakota under the Safe Drinking Water Act (SDWA) to implement an underground injection control (UIC) program for Class VI injection wells located within the state, except within Indian lands.

DATES: This regulation is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2013-0280. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

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SUPPLEMENTARY INFORMATION:

I. Introduction

The state of North Dakota received primary enforcement responsibility (primacy) for Class I, III, IV and V injection wells under SDWA section 1422 on September 21, 1984, and Class II injection wells under SDWA section 1425 on May 11, 1984. The state of North Dakota has applied to the EPA under SDWA section 1422, 42 U.S.C. 300h-1, for primacy for Class VI injection wells, except within Indian lands. This action is based on a legal and technical review of the state of North Dakota's application as directed in the Code of Federal Regulations (CFR) at 40 CFR part 145. As a result of this review, the EPA is approving the state of North Dakota's application because it meets all applicable requirements for approval under SDWA section 1422, and the state is capable of administering a Class VI UIC program in a manner consistent with the terms and purposes of SDWA and all applicable regulations.

II. Legal Authorities

These regulations are being promulgated under authority of SDWA sections 1422 and 1450, 42 U.S.C. 300h-1 and 300j-9.

III. Requirements for State UIC Programs

SDWA section 1421 requires the Administrator of the EPA to promulgate minimum requirements for effective state UIC programs to prevent underground injection activities that endanger underground sources of drinking water (USDWs). SDWA section 1422 establishes requirements for states seeking EPA approval of state UIC programs.

For states that seek approval for UIC programs under SDWA section 1422, the EPA has promulgated a regulation setting forth the applicable procedures and substantive requirements, codified in 40 CFR part 145. It includes requirements for state permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

IV. North Dakota's Application

A. Background

On June 21, 2013, the state of North Dakota submitted a program revision application to add Class VI injection wells to its SDWA section 1422 UIC program. The EPA reviewed the application and published a Federal Register notice of North Dakota's Underground Injection Control Program Revision Application on August 9, 2013 (78 FR 48639), which sought public comments and provided an opportunity to request a public hearing. Public notice of North Dakota's application was also published in the Bismarck Tribune on August 9, 2013.

B. Public Participation Activities Conducted by the State of North Dakota

The state of North Dakota held two public hearings with public comment periods on the state's intent to adopt its Class VI UIC regulations. The first public hearing was held on April 24, 2012, and the public comment period closed on June 8, 2012. The second public hearing was

held on October 22, 2012, and the public comment period closed on November 1, 2012. Both public hearings were held in Bismarck, North Dakota, and no public comments were received during the two public comment periods.

C. Public Participation Activities Conducted by the EPA

On August 9, 2013, a notice announcing North Dakota's Underground Injection Control Program Revision was published in the Federal Register (78 FR 48639) and in the Bismarck Tribune. This notice provided that a public hearing would be held if requested. The agency did not receive any requests for a public hearing and received five written comments. Two comments were outside the scope of the state's application and three comments were focused on the Memorandum of Agreement between Region 8 and the North Dakota Industrial Commission. The EPA worked with the Commission to address these comments and revise the Memorandum of Agreement.

V. Public Comments Received on the Proposed Rule and EPA's Response to Comments

On May 19, 2017, EPA issued a proposed rulemaking (82 FR 22949) and requested public comment. The public comment period was open for 60 days and ended on July 18, 2017. The EPA received comments from 15 individual commenters. Of these 15 commenters, 11 submitted comments in support of the rule; 1 commenter submitted a comment outside the scope of the rule; and 3 commenters submitted 13 comments asserting that certain provisions in North Dakota's regulations do not meet the federal requirements. After close consideration of these 13 comments, the EPA resolved 11 in its response and determined 2 to be outside the scope of the rule. The comments EPA received and EPA's responses are available in EPA's Docket No. EPA-

HQ-OW-2013-0280.

VI. EPA's Approval

In this action, the EPA is approving the state of North Dakota's Class VI UIC program; hereby, the state will assume primary enforcement responsibility (primacy) for regulating Class VI injection wells in the state, except within Indian lands. Support of this action is part of the public record in EPA's Docket No. EPA-HQ-OW-2013-0280. This action amends 40 CFR part 147 and incorporates by reference the EPA-approved state statutes and regulations. The EPA will continue to administer the UIC program for all well classes within Indian lands.

The provisions of the state of North Dakota's Code that contain standards, requirements, and procedures applicable to owners or operators of Class VI UIC wells are incorporated by reference into 40 CFR 147.1751. Provisions of the state of North Dakota's Code that contain standards, requirements, and procedures applicable to owners or operators of Class I, III, IV and V injection wells have already been incorporated by reference into 40 CFR 147.1751. Any provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, will be enforceable by the EPA pursuant to SDWA section 1423 and 40 CFR 147.1(e).

In order to better serve the public, the EPA is reformatting the codification of the EPA-approved North Dakota SDWA section 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI. Instead of codifying the North Dakota Statutes and Regulations as separate paragraphs, the EPA is now incorporating by reference a binder that contains the EPA-approved North Dakota Statutes and Regulations for Well Classes I, III, IV, V and VI. This binder is incorporated by reference into § 147.1751 and is available at

<http://www.regulations.gov> in the docket for this rule. A complete list of the contents of the binder “EPA-approved North Dakota SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI” is codified as Table 1 to paragraph (a) in that section.

The EPA will continue to oversee the state of North Dakota’s administration of the SDWA Class VI program. Part of the EPA’s oversight responsibility will require quarterly reports of non-compliance and annual UIC performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between the EPA and the state of North Dakota, signed by the Regional Administrator on October 28, 2013, provides the EPA with the opportunity to review and comment on all permits.

VII. Effective Date

This final rule is effective immediately upon publication. Section 553(d) of the Administrative Procedure Act (“APA”), 5 U.S.C. 553(d), provides that final rules shall not become effective until 30 days after publication in the Federal Register, “except . . . as otherwise provided by the agency for good cause,” among other exceptions. The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” *Gavrilovic*, 551 F.2d at 1105. EPA has determined that there is good cause for

making this final rule effective immediately because this action will simply provide that the state of North Dakota has primacy under SDWA for the Class VI UIC program, pursuant to which the state of North Dakota will be implementing and enforcing a state regulatory program that is as stringent as the existing federal program. At this time, there are no federally permitted Class VI wells in North Dakota. As a result, there are no current permittees that need time to prepare for this rule and any prospective permittees will benefit from the regulatory certainty that an immediate effective date will provide. This final rule will not require affected persons to take action or change behavior to come into compliance within the next 30 days. Furthermore, several prospective applicants are waiting for the state of North Dakota to receive primacy before submitting their permit applications. For these reasons, the EPA finds that good cause exists under section 553(d)(3) to make this rule effective immediately upon publication.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing

regulations and has assigned OMB control number 2040-0042. Reporting or recordkeeping requirements will be based on the state of North Dakota UIC Regulations, and the state of North Dakota is not subject to the PRA.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule does not impose any requirements on small entities as this rule approves a state program. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. EPA’s approval of the state of North Dakota’s program will not constitute a federal mandate because there is no requirement that a state establish UIC regulatory programs and because the program is a state, rather than a federal program.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on

the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action contains no federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it approves a state program.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act and 1 CFR part 51

This rulemaking does not involve technical standards. The binder, “EPA-Approved North Dakota SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI,” dated December 2013, is described in greater detail in Section VI of this preamble. The material is reasonably available through the rulemaking docket on www.regulations.gov and from the EPA.

K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA has determined that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action will simply provide that the state of North Dakota has primacy under SDWA for the Class VI UIC program, pursuant to which the state of North Dakota will be implementing and enforcing a state regulatory program that is as stringent as the existing federal program.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indian-lands, Intergovernmental relations,
Reporting and recordkeeping requirements, Water supply.

Dated: April 10, 2018.

E. Scott Pruitt,
Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency amends 40 CFR part 147 as follows:

**PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND
INJECTION CONTROL PROGRAMS**

1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h-4.

2. In §147.1751:

a. Revise the section heading, the introductory text, paragraph (a), and paragraph (b) introductory text.

b. Add paragraphs (e) through (h).

The revisions and additions read as follows:

§147.1751 State-administered program—Class I, III, IV, V and VI wells.

The UIC program for Class I, III, IV and V wells in the state of North Dakota, except those located on Indian lands, is the program administered by the North Dakota Department of Health, approved by the EPA pursuant to SDWA section 1422. Notification of this approval was published in the Federal Register on September 21, 1984; the effective date of this program is October 5, 1984. The UIC Program for Class VI wells in the state of North Dakota, except those located on Indian lands, is the program administered by the North Dakota Industrial

Commission, approved by the EPA pursuant to SDWA section 1422. Notification of this approval was published in the Federal Register on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; the effective date of this program is **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. This program consists of the following elements, as submitted to the EPA in the state’s program revision application.

(a) The requirements set forth in the state statutes and regulations cited in the binder entitled “EPA-Approved North Dakota SDWA § 1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI,” dated December 2013, and listed in Table 1 to paragraph (a) of this section, are incorporated by reference and made a part of the applicable UIC program under SDWA for the state of North Dakota. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the North Dakota regulations that are incorporated by reference in paragraph (a) of this section may be inspected at the U.S. Environmental Protection Agency, Region 8, Library 2nd Floor, 1595 Wynkoop Street, Denver, Colorado 80202; Water Docket, EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460; and the National Archives and Records Administration (NARA). If you wish to obtain materials from the EPA Regional Office, please call (303) 312-1226; for materials from a docket in the EPA Headquarters Library, please call the Water Docket at (202) 566-2426. For information on the availability of this material at NARA, call (202) 741-6030, or go to <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Table 1 to paragraph (a) EPA-Approved North Dakota SDWA §1422 Underground Injection Control Program Statutes and Regulations for Well Classes I, III, IV, V and VI
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State citation	Title/subject	State effective date	EPA approval date ¹
North Dakota Century Code Sections 38-12-01 – 38-12-03	Regulation, Development and Production of Subsurface Minerals	1980	September 21, 1984, 49 FR 37066
North Dakota Century Code Sections 61-28-02 and 61-28-06	Control, Prevention and Abatement of Pollution of Surface Waters	1989	March 6, 1991, 56 FR 9418
North Dakota Administrative Code Sections 33-25-01-01 – 33-25-01-18	Underground Injection Control Program	1983	September 21, 1984, 49 FR 37066
North Dakota Administrative Code Sections 43-02-02-01 – 43-02-02-50	Subsurface Mineral Exploration and Development	1986	March 6, 1991, 56 FR 9418
North Dakota Administrative Code Sections 43-02-02.1-01 – 43-02-02.2-19	Underground Injection Control Program	1984	September 21, 1984, 49 FR 37066
North Dakota Century Code Sections 38-22-01 – 38-22-23	Carbon Dioxide Underground Storage	2009	[Insert date of publication in the Federal Register], [[Insert Federal Register citation]
North Dakota Administrative Code Sections 38-08-16 – 38-08-17	Control of Oil and Gas Resources	2013	[Insert date of publication in the Federal Register], [Insert Federal Register citation]
North Dakota Administrative Code Sections 43-05-01-01 – 43-05-01-20	Geologic Storage of Carbon Dioxide	2013	[Insert date of publication in the Federal Register], [[Insert Federal Register citation]

(b) The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program:

(e) The Memorandum of Agreement between EPA Region VIII and the North Dakota Industrial Commission, signed by the EPA Regional Administrator on October 28, 2013.

(f) The Memorandum of Understanding between the North Dakota Industrial Commission,

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in this column for the particular provision.

Department of Mineral Resources, Oil and Gas Division and the North Dakota Department of Health, Water Quality Division, Related to the Underground Injection Control Program signed on June 19, 2013.

(g) The statement of legal authority, “Class VI Underground Injection Control Program, Attorney General’s Statement,” signed by the Attorney General of North Dakota on January 22, 2013.

(h) The Class VI Program Description and any other materials submitted as part of the program revision or as supplements thereto.

[FR Doc. 2018-08425 Filed: 4/23/2018 8:45 am; Publication Date: 4/24/2018]